PD-1015-18
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 3/7/2019 4:06 PM
Accepted 3/12/2019 1:04 PM
DEANA WILLIAMSON
CLERK

THE OFFICE OF THE HONORABLE
WILLIAM JAMES DIXON
NAVARRO COUNTY DISTRICT ATTORNEY
NAVARRO COUNTY COURTHOUSE
300 W. THIRD AVENUE, SUITE 301
CORSICANA, TEXAS 75110
PHONE (903) 654-3045
FACSIMILE (903) 872-6858

FILED
COURT OF CRIMINAL APPEALS
3/12/2019
DEANA WILLIAMSON, CLERK

Deana Williamson
Clerk of the Court
Texas Court of Criminal Appeals
201 West 14th St, Room 106
Austin, Texas 78701

RE: **Ralph D. Watkins v. State of Texas, PD-1015-18**

Dear Ms. Williamson:

On February 20, 2019, the Court heard oral arguments on the above-styled and numbered case. The Court granted the State's subsequent Motion for Leave to File a Post-Submission Letter Brief be presented to the Court by March 13, 2019. Accordingly, the State presents this Letter Brief.

On pages 10 and 11 of the State's brief, the State discussed lower courts using the *Quinones*/*Brady* standard subsequent to *Morton*. During oral arguments, the State altered its position regarding the *Quinones*/*Brady* standard. This brief is to clarify the State's current position.

Prior to the enactment of the Michael Morton Act in 2013, this Court had provided two definitions of materiality. For inculpatory evidence, this Court defined materiality to mean evidence indispensable to the State's case. *McBride v. State*, 838 S.W.2d 248, 251 (Tex. Crim. App. 1992). For exculpatory, impeaching, or mitigating evidence, this Court defined materiality to mean a reasonable probability that disclosure would lead to a different outcome. *See Quinones v. State*, 592 S.W.2d 933, 941 (Tex. Crim. App. 1980).

When the legislature reenacted article 39.14 with the language "material to any matter involved in the action," it applied the standard to inculpatory evidence. *See* TEX. CODE CRIM. P. art 39.14(a). Accordingly, the prior inculpatory "indispensable to the State's case" definition applies. The legislature removed any materiality requirement from exculpatory, impeaching, or mitigating evidence. *See* TEX. CODE CRIM. P. art 39.14(h).

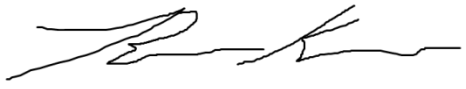
Nevertheless, an intermediate appellate court does not reach an erroneous conclusion by applying the prior *Brady* definition of materiality. Article 39.14 creates a statutory right, not a constitutional right. As such, a violation of article 39.14 must be analyzed for substantial harm. TEX. R. APP. P. 44.2(b). Substantial harm analysis looks to whether an error created a reasonable likelihood of a different outcome. *See Snowden v. State,* 353 S.W.3d 815, 821 (Tex. Crim. App. 2011). The harm associated with an article 39.14(a) violation is that the defense is surprised. *See generally Oprean v. State,* 238 S.W.3d 412, 415-16 (Tex. App.—Houston [1st. Dist.] 2007, pet. ref'd). Accordingly, the only way an article 39.14(a) violation meets the substantial harm standard is if turning evidence over to the defense would have created the reasonable likelihood of a different outcome. This is virtually identical to the *Brady* materiality definition that this Court used prior to the Michael Morton act. *See Quinones*, 592 S.W.2d at 941. As such, by employing the prior *Brady* definition, an intermediate appellate court turns the two-step process of error and harm into a *de facto* one-step process—reaching the correct outcome, even if employing the wrong definition.

In the present case, the 10th Court of Appeals applied the prior Brady definition, and stated, "We do not believe that even if the exhibits had been produced that there is a reasonable probability that the outcome of the trial would have been different, or that the sentence Watkins received would have been reduced." *Watkins v. State*, 554 S.W.3d 819, 822 (Tex. App.--Waco, 2018). Accordingly, the 10th Court of Appeals has already made a *de facto* determination that Petitioner was not substantially harmed under Rule 44.2(b). As such, the 10th Court of Appeals reached the correct conclusion.

Thank you for your assistance in bringing this matter to the attention of the Court.

Respectfully submitted,

William James Dixon[1]
Criminal District Attorney, Navarro County, Texas



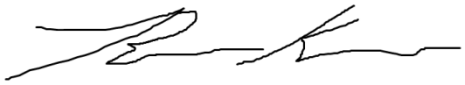
Robert Linus Koehl
Assistant Criminal District Attorney
Navarro County, Texas
300 W. Third Ave., Ste. 301, Corsicana, TX 75110
State Bar No. 24097948
(903) 654-3052

[1] Governor Abbott appointed William Dixon to succeed the late R. Lowell Thompson as Navarro County's Criminal District Attorney. The legislature confirmed Mr. Dixon's appointment on February 20th, the morning that this Court heard oral arguments on the instant case. Mr. Dixon was sworn in later that day. Prior filings in this case bear the name of Will Thompson, who was interim District Attorney from October 24, 2018 through February 20, 2019.

CERTIFICATE OF SERVICE

The undersigned has e-served Jason Niehaus, counsel for the Petitioner, through the eFileTexas.gov filing system and emailed a courtesy copy on the 7th day of March, 2019.

The undersigned has e-served the State Prosecuting Attorney's Office through the same filing system and emailed a courtesy copy as well.



Robert Linus Koehl
Assistant Criminal District Attorney